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STATE OF MICHIGAN

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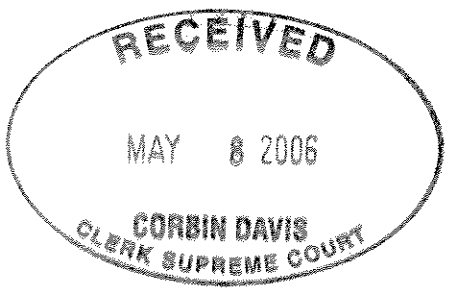
May 4, 2006



Corbin R. Davis, Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: **ADM File No. 2005-04**
Proposed Amendments to Michigan Juvenile Court Rules 3.915; 3.963; 3.965; 3.966; 3.972; 3.973; 3.974; 3.975; 3.976; and 3.978

Dear Mr. Davis:

I am writing to comment on the proposed changes and amendments to the Michigan Court Rules in Subchapter 3.900, et seq. Although I do not see a problem with the vast majority of the proposals, there are a few very major problems with some of the proposed amendments. They are as follows:

I The proposed shortening of the time frame for disposition hearings in child protection matters when the child is in placement from 35 to 28 days is completely unjustified and impossible to comply with for a number of reasons.

A. On July 13, 2004 I was provided by S.C.A.O. with a written summary of proposed changes to the Michigan Juvenile Code, from the June, 2004 M.P.J.A. Conference. In parentheses therein it was asserted that Court Rule on dispositions would need to be later revised to shorten the scheduling of the initial disposition hearing to 28 days instead of 35 days after adjudication. I wrote on July 15, 2004 to then Chief Justice Maura Corrigan to point out the following reasons why that would be in fact not even remotely physically possible for our court to comply with in most cases. The following paragraphs will incorporate my comments from that letter to Justice Corrigan.

1) It is outside of our control and power as a court to possibly comply with a 28-day requirement in most cases. I have two counties, with the county seats 70 miles apart. S.C.A.O. has now mandated that I handle all of the Circuit Judge's domestic relations cases in a timely fashion for both counties on top

of an already full Probate/Juvenile/Administrative workload. We have previously repeatedly communicated to S.C.A.O. and the Supreme Court that we cannot handle ANY further new mandates including any shortening of time frames. That remains true. We simply cannot go faster, faster, faster, faster.

2) Our court does not even have its own courtroom. We have to borrow one when it is not in use from another judge. Our docket is usually completely full four to eight weeks in advance due to prior unfunded mandates, so we rarely have a hearing time possible within 28 days. When other factors, such as staff availability, times that I am scheduled outside my district, holidays, the schedules and travel of as many as eight attorneys on one child protection matter, the D.H.S. worker, witnesses, Northern Michigan weather, etc., are considered, it is only possible by the barest margin to comply with the current 35-day rule. Sometimes it has been an impossibility, but the attorneys at times waive the time requirement; however, they cannot be required to. When the time for notice, which is up to 14 days by court rule, is deducted, a reduction from 35 to 28 days is approximately a 35% reduction in the window for actually holding the hearing, which is a huge percentage. Even a 1% or 2% reduction in time available would be insurmountable for us to overcome.

3) After notice time is taken out, the 28-day requirement would become actually only a 14-day window for holding the hearing. Further, after the adjudication is held, it takes up to two weeks for the court to have staff availability and capacity to generate the order from the adjudication and notice of hearing of the disposition. Our court has no back-up staff in existence for such paper work. If, for example, our Juvenile Register is gone on vacation for two weeks, that is two weeks in which we have zero capacity to do or serve notices of disposition hearings. Therefore, when all is said and done, a 28-day period can be completely eaten up just by the time it takes to get notices to parties in accordance with the court rules, leaving zero time in those cases for the actual conducting of the hearing. Many times, we hold hearings past our court closing time approved by S.C.A.O. of 4:30 P.M. Once those hearings are completed, since it is past closing time and our counties do not pay overtime to the court staff, it is rarely possible for the court orders to be typed the same day as the hearing. As stated before, it can then take up to two weeks thereafter for the court orders to be typed, much less signed and served due to staff and judicial availability. So now after the required notice, we are already down to, in some cases, no window of time within the 28 days within which to actually commence the hearing. Our notices of disposition hearing simply cannot be done in a faster manner given current resources. The only way to increase resources is if the State solely finances additional staff and office facilities for the courts. Further, our referees by law cannot conduct disposition hearings; they can only be conducted by myself as the judge.

4) All of the above were not only communicated to Justice Corrigan, but also to Supreme Court Counsel Michael Gadola, including in a follow-up letter of mine dated August 31, 2004.

B. I believe the comment to this proposed change in the court rule states that it is to comply with federal requirements; however, the federal regulations under the Adoption and Safe Families Act do not contain any 28-day requirement other than the requirement of a permanency planning hearing within 28 days in certain severe cases. Therefore, it is incorrect for the rule and the comment to state that there is a 28-day requirement for disposition hearings, because no such requirement exists at the federal level. Further, as stated above, the Supreme Court is already aware that there is no such 28-day requirement, because this has been part of the subject of previous communication and correspondence between Mr. Gadola and myself.

C. The comment to the proposal states that the intent is to comply with federal regulations (which again do not even exist) in order to meet federal foster care funding requirements. However, even among all child protection matters in which children are placed out of their families, we have a substantial number in which there is no federal Title IV funding eligibility anyway for unrelated reasons such as the financial resources of the family (no "deprivation" factor). It makes absolutely no sense whatsoever to across the board impose a 28-day mandate for all disposition hearings when there is a placement, when in fact federal foster care funding is only a possibility in a fraction of those cases. Put another away, it would be ludicrous to, in a case in which the parents have income that makes the placement ineligible for Title IV funding, nevertheless unnecessarily place an impossible burden on the courts and parties to meet an arbitrary 28-day requirement.

D. It is completely and fundamentally unfair, after the State of Michigan has statutorily mandated a "report card" for the courts in meeting the legal time frames in child protection matters, to then change the rules in the middle of the game to shorten those time frames without providing any resources for meeting such a draconian mandate. To do so is setting the courts up for a "failing grade" in the eyes of the public, including the voters, without telling the public and voters that it is in fact really the State that it is the cause of that failing grade, not the court. To do so is dishonest and misleading to the public.

II The proposed amendment of the court rules to delete the ability of the courts to make a placement of children at a dispositional review hearing when they have been up to that time released to their parents, in favor of requiring a new petition and preliminary hearing, would be out of compliance with the Michigan Juvenile Code and leave abused and neglected children at risk in some cases.

A. The comment to this proposal cites M.C.L. 712A.19, which I have reviewed. This is another instance of the comment to the proposed rule being incorrect because M.C.L.

712A.19 does not contain any such language as proposed in the court rule. Therefore, rather than making the court rule consistent with the statute as claimed inaccurately in the comment as proposed, this would make the court rules inconsistent with the Juvenile Code section, instead.

B. Adoption of this proposal would create the following fundamental risks to abused and neglected children. This is best illustrated by an example of a scenario that actually happens very frequently in child protection matters. It is quite common in child protection matters for children to not be removed from their family at or prior to the initial disposition hearing; and in fact that is the intent of the Michigan Constitution, statutes and court rules, that children be left in the home of their parents whenever possible consistent with their protection. In those instances, the parents, as respondents, are almost always ordered to comply with some services or conditions by court order in order for the children to remain in their home with them. Examples of these services and conditions might be things like parenting classes, substance abuse counseling, domestic violence counseling, etc. In those instances, of course at the dispositional review hearings, the parents' compliance with the court order and case service plan is monitored and reviewed. In a large percentage of those cases, at one or more dispositional review hearings, it is found that the respondent-parents have either completely or partially failed to comply with the court ordered conditions for the release of the children into their homes. Under the existing court rule, that noncompliance with existing court orders can be grounds for the court to go ahead and remove and place the children at the review hearing.

If the proposed amendment is adopted, however, the court would not be able to do that. The court rule would specifically require that the court could at most take the children into protective custody, which under other court rules is limited to 24 hours excluding Sundays and holidays. There could then only be a court order extending the placement for the protection of the child if both of the following happened within 24 hours excluding Sundays and holidays:

1) The Petitioner filed a supplemental petition pursuant to the proposed rule; and

2) The court was able to convene an emergency preliminary hearing also within that same time frame.

If the Petitioner failed to submit a supplemental petition within the 24 hours, the protective custody would lapse and the child would be returned to the parent automatically placing him or her at possible risk. Even if a petition were submitted, it would be necessary for the court to some how convene an emergency preliminary hearing within that 24 hour period, which would not be shortened by the time that it took for the Petitioner to submit a supplemental petition. What if at 4:30 P.M. on Thursday, the court concluded a review hearing by entering a protective custody order and at 4:29 P.M. on Friday, one minute within the 24 hour period, D.H.S. walked in

with a supplemental petition? How does the Supreme Court expect that the trial courts would then convene an emergency preliminary hearing and give some form of notice in one minute? Further, it is simply impossible for us courts to convene any more emergency hearings than we are already required to under the Michigan Court Rules. Again, with a judge spread between two counties and sometimes out of the district, and without a referee, or a courtroom, it is already impossible sometimes to pull together an emergency hearing within 24 hours based on existing workload. And finally, what sense does it make when all of the parties are already before the court for a scheduled review hearing, to by rule require that the court cannot act, but rather must recess the hearing, send everyone home, await a further petition, and then some how try to get everybody back together again within 24 hours, when it may not have a courtroom, a judge, a D.H.S., and one or more of the attorneys available? Why not continue to have a mechanism in the court rules that allows the court to deal with the situation while the parties and attorneys are all assembled before the court for a regularly scheduled and regularly noticed review, which should be the preference over emergency hearings that someone may not be able to get to.

And yet it keeps going beyond this. That is because in order to even submit a supplemental petition under the Michigan Juvenile Code, D.H.S. or another petitioner would have to be able to allege facts from which the court could find that some new form of independent child abuse or neglect had occurred. If such cannot be found or even alleged, it would be impossible under the proposal for the court or the petitioner to act any further. If at a review hearing, in that large percentage of cases, it is found that a parent has not committed any new abuse or neglect, but has perhaps blatantly refused or failed to comply with existing court orders such as by attending a parenting class or substance abuse counseling, the proposal would delete the opportunity for the court to act to enforce its own orders at the review hearing. And yet since noncompliance with a court order is not within the statutory definition of child abuse or neglect, no further supplemental petition could be filed in that instance. Therefore, the proposed rule would leave the court completely powerless to enforce its previous orders and leave D.H.S. completely powerless to do anything about a situation by even requesting removal of the children unless there were some new independent child abuse or neglect that could be alleged. This would leave the untenable situation wherein once a child is left with the legally preferential release to the parents under conditions at the initial disposition hearing, that could never be changed unless the parent committed further abuse or neglect. Nothing could be done to protect the children as a consequence of the parents' noncompliance with existing court orders that resulted from the earlier adjudicated abuse and/or neglect. The proposed court rule cannot be read or interpreted in any other way. There would be no mechanism whatsoever for removal or placement of children under this scenario.

III Our court, and I'm sure other small courts like ours, simply do not have any possible physical capacity to schedule review hearings (whether they are 91 or 182 day review hearings) for any shorter time frame than that. For example, it is impossible for our court to schedule 91-day

review hearings in 77 or 84 day time frames in order to allow some flexibility for the eventuality of an adjournment. Doing so would result in review hearings more frequent than every 91 days, and we simply do not have the physical capacity to do that. Therefore, when we conclude one review hearing, we schedule the next one on the 91st or 182nd day thereafter and cannot possibly do anything other than that. However, certainly situations arise that require adjournment or rescheduling of review hearings as with any other type of hearing. And frequently these occasions arise on a moment's notice. For example, under the existing court rules we have had in actuality days on which a 91-day review hearing was scheduled on the 91st day, and on that day we have had a severe winter storm that has knocked out the power to our courthouse for the entire day making it impossible to light the courtroom and impossible to use our electronic recording equipment. Therefore, it has been impossible to even go on the record on that day to state that there has been a power outage and/or winter storm necessitating an adjournment. We have had to simply wait until another day when we have power to operate our office equipment to type up an Order of Adjournment stating the reasons therefor. This has necessarily of course taken us beyond the 91 day time frame for reasons that are beyond our control. Another instance when this may occur is if the child's Lawyer-GAL suddenly takes ill and is unable to attend the 91 day review hearing scheduled for the 91st day, but yet the court rules do not permit us to proceed without the Lawyer-GAL present. Therefore, the proposal that review hearings cannot be adjourned beyond the required time frame for any reason will be in some instances simply, again, impossible to comply with. We do not control the weather or people's illnesses or things of that nature. The rule needs to contain some provision that allows for adjournments when it is impossible to comply with a required time frame. Failing to do so simply invites the courts to ignore the rules in those instances in which it is physically impossible to comply with them for reasons beyond our control.

IV With respect to the proposed requirement that review hearings be held on time even though a petition for termination of parental rights is pending does make sense because there are instances when termination hearings drag out over a period of time, and during which issues such as parental visitation need to be revisited and addressed, even though by statute in most termination cases visitation has been automatically terminated. However, if the Supreme Court adopts this proposed rule, it is automatically accepting the fact that the time it takes to conduct review hearings in a matter, while a termination petition is pending, will necessarily cut into the hearing time available for the termination hearing itself in the same case, thereby delaying the conclusion of the termination and ultimately delaying permanency of the children.

For the foregoing reasons, we request in the strongest possible terms that the proposed amendments to the court rules in I and III above not be adopted by the court, and we are on record as making it clear in advance, as we have in the past to Mr. Gadola, that those amendments even if adopted will in many cases be physically impossible for the courts to comply with for reasons beyond our control. Further, we request that the court not adopt the amendment referenced in III above for the substantive reason that adoption of the same places abused and neglected children at risk in adjudicated cases in which the parents refuse or otherwise fail to comply with court ordered conditions from the initial disposition hearing by precluding the removal or placement of the children as a consequence in those matters as permitted by the current rules.

Again thank you for the opportunity to comment on these rules as always.

Sincerely,

Thomas B. North

Thomas B. North
Probate Judge/Family Division Judge

TBN/kak

cc: Deb Jenson, Children's Charter
Honorable Milton Mack, Wayne County Probate Court Judge
Honorable Michael Anderegg, Marquette County Probate Court Judge